

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

HOMELAND INSURANCE COMPANY OF
NEW YORK,

Plaintiff,

v.

CLINICAL PATHOLOGY
LABORATORIES, INC., AND SONIC
HEALTHCARE USA, INC.,

Defendants.

CIVIL ACTION NO. 1:20-CV-783

**DEFENDANTS' OPPOSED MOTION FOR LEAVE TO FILE A ONE-PAGE
SUR-REPLY TO PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTIONS TO COMPEL**

Defendants seek leave to file a one-page sur-reply to correct Plaintiff's misstatement, in its reply brief in support of its motions to compel, that Defendants' brief responding to those motions was "late." *See* Dkt. Nos. 157 & 158 at 2, n.1. Sur-replies are appropriate when they address misstatements made in reply. *See, e.g., Gonzalez v. CNL Wings*, No. 14-CA-886, 2015 WL 10818674, at *6 (W.D. Tex. Mar. 24, 2015) (granting motion for leave to file a sur-reply "needed to correct a misstatement made [in] reply"); *Ranch v. City of San Antonio*, No. 10-CV-316, 2011 WL 13114906, at *2 (W.D. Tex. Sept. 29, 2011) (granting motion for leave to file a sur-reply designed to "correct" statements made in reply brief).

Here, Plaintiff asserted in reply that Defendants' response was "late," even though Defendants filed it within the time constraints set forth by Local Rule CV-7(b). *See* Dkt. Nos. 157 & 158 at 2, n.1. Defendants brought Local Rule CV-7(b) to the attention of Plaintiff and requested that Plaintiff file a corrected brief. Plaintiff refused, and so Defendants now seek leave to file the one-page sur-reply that is attached as Exhibit B to address and rebut Plaintiff's incorrect assertion.

For the Court's convenience, a proposed order is attached at Exhibit A. Defendants conferred with Plaintiff in advance of filing this motion and Plaintiff indicated its opposition.

* * *

Dated: October 24, 2022

Respectfully submitted,

By: /s/ Ernest Martin
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

I hereby certify that, consistent with Local Court Rule CV-7(i), counsel for Defendants and counsel for Plaintiff conferred by e-mail regarding this motion prior to its filing and were unable to reach an agreement regarding the same.

/s/ Greg Van Houten

Greg Van Houten

CERTIFICATE OF SERVICE

I hereby certify that, consistent with Local Court Rule CV-5, a true and correct copy of the foregoing was sent to all parties of record pursuant to the Electronic Filing Procedures and the Federal Rules of Civil Procedure on this 24th day of October 2022.

/s/ Ernest Martin

Ernest Martin